

REMARKS REGARDING RESPONSES AND AMENDMENTS**1. Amendment of Drawings**

Corrected Drawings will be submitted.

2. Response to Rejections under 35 USC 112

The Examiner, at page 2-3, paragraphs 3-4, has rejected claims 33-42 as failing to comply with the written description requirement. The Examiner states that the claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey such information. The Examiner notes that the original specification provides no disclosure of a "groove comprising vane restraining member". The Examiner states that the wording appears to suggest that the groove includes additional structure which acts to restrain the vane. The Examiner notes that from the original specification the groove itself restrains the vane. The Examiner notes that the original specification provides no disclosure of "adhesive".

Your applicant respectfully comments that the phrase "groove comprising vane restraining member" was and is not intended to suggest that the groove includes additional structure which acts to restrain the vane. Your applicant agrees that the original specification discloses that the groove itself restrains the vane. The matter of how the groove restrains the vane will be appreciated by those of ordinary skill in the art. Your applicant has made comments relative to "adhesive" in the section herein entitled "Amendment of the Specification" and respectfully directs the Examiner to those arguments.

With the agreement by the applicant and this explanation that no additional structure other than a "restraining or securing means" is suggested, your applicant respectfully requests the Examiner to withdraw the 35 USC 112 rejection at page 2,

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1 paragraphs 3-4.

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3 **3. Response to Rejections under 35 USC 102(b)**

4 **Rejections of Claims 30-31 based on CLYDE:** The Examiner, at page 3,
5 paragraphs 5-6, has rejected claims 30-31 as anticipated by Clyde observing that Clyde,
6 directed toward a waste liquid treatment system, teaches a tube (16) receiving a vaned
7 inner core (20) therein, wherein the tube and the core have the same axis.

8 Your applicant respectfully draws the Examiner's attention to Clyde, column
9 7/lines 22-27 where it is stated, "...Located inside cylinder 16 is a shaped foam member
10 20 which provides an extremely high area contact surface. As can be seen from FIGS. 2A
11 through 5D, the shape of the interior high-area contractor member can be of substantially
12 any selection and design...." The Examiner's attention is drawn to the absence of
13 discussion of "axis", i.e., there is no reference to the axis of the cylinder 16 or the foam
14 member 20 in the specification or the claims. The Examiner is also referred to numerical
15 references 114 and 116 at column 11 commencing with line 46 where it is stated "...it can
16 be seen that the ceramic foams 20 and 26 respectively are recessed from the edge 112 of
17 the outer member a distance as indicated by arrows 114 and 116..." Your applicant
18 asserts that this "recessed from the edge 112" supports the contention that an axis of the
19 ceramic foams may be offset from an axis of the cylinder (16) and that hence there is not
20 support in Clyde that there is a common axis.

21 It is respectfully submitted that said differences distinguish your applicant's
22 invention from that of Clyde. Your applicant respectfully requests the Examiner to
23 withdraw the rejection under 35 U.S.C. 102(b).

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25 **Rejections based on PAGE, No. 2,183,657:** At page 3 paragraphs 5 and 7 the

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not
relevant
to
claim 30

1 Examiner has rejected claims 30-31 under 35 USC 102(b) as being anticipated by Page.
2 The Examiner states that Page teaches a tube (8) receiving a vaned inner core (9) wherein
3 the tube and the core have the same axis per Fig. 4. Your applicant respectfully observes
4 that claim 30 does not claim an axis. The Examiner's attention is respectfully drawn to
5 Page at Figures 3, 4, 5 and 6 and page 2/lines 51-54 where it is stated "In Figure 5, there
6 is shown a filter unit 8 of modified construction comprising a cylindrical body having
7 suitable cross arms or partitions 9 provided therein..." The Examiner's attention is drawn
8 to the fact that Page does not disclose a tube receiving a vaned inner core having an axis.
9 Page illustrates a tube inherently constructed with "cross arms or partitions". There is no
10 reference to "axis" observed in Page. There is no claim that a tube or a "partition" has an
11 axis or that an axis of a tube coincides with an axis of "cross arms or partitions".

12 Your applicant respectfully asserts that Page is not a basis for rejection as
13 anticipation. As is addressed hereafter, a rejection for anticipation under section 102
14 requires that each and every limitation of the claimed invention be disclosed in a single
15 prior art reference. (*In Re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed.
16 Cir. 1994); *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 1346 (C.A.Fed. Mass. 2000).
17 For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the
18 claimed invention must be identically shown in a single reference. The elements must be
19 arranged as in the claim under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566,
20 1567 (Fed. Cir. 1990).

21 It is respectfully submitted that said differences distinguish your applicant's
22 invention from that of Page. Your applicant has amended claims. Your applicant
23 respectfully requests the Examiner to withdraw the rejection under 35 U.S.C. 102(b).

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25 **4. Response to Rejections under 35 U.S.C. 103(a)**

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1 The Examiner, at page 4/paragraphs 8-11 rejects Claim 32 under 35 U.S.C. 103(a)
2 in light of Page. The Examiner notes that while Page does not disclose providing a tube
3 having a length less than the inner core, that the relative length of the inner core to the
4 tube is not seen to materially affect the overall operation of the system or to produce any
5 new and unexpected result. Hence the providing of a tube length less than the inner core
6 length is deemed to be obvious as a matter of choice in design which is insufficient to
7 patentably distinguish the claims over the prior art.

8 The Examiner's attention is drawn to Page, Figures 1, 3, 4, 5 and 7 and page
9 2/lines 9-14 where it is stated "This filter bed is built up of a plurality of small units 5,
10 here shown as cylindrical in cross-section, and each comprising a plurality of holes 6,
11 preferably extended lengthwise through the units, as clearly illustrated in the drawing."
12 Page thus teaches a plurality of holes extending lengthwise through the units.

13 The absence of a feature similar to the feature or features of the present invention
14 are respectfully argued as references which teach away from the disclosed and claimed
15 invention and thus are not appropriately a basis of rejection under 103. *In re Gurley* 27
16 F.3d 551 at 553(1994 cafc). In general a reference will teach away if the line of
17 development flowing from the references disclosure is unlikely to be productive of the
18 result sought by the applicant. The matter of a core of a length less than a tube is teaching
19 away from Page. Page does not have tubes separate from a core. Page has holes the
20 length of the unit.

BS
21 Your applicant asserts that a new or unexpected result arises from the structure of
22 the present invention. The recognition herein that the core may be of a lesser length than
23 the inner core demonstrates the unexpected improvement of allowing construction with
24 fewer parts thus expecting a reduction in cost of construction.

25 It is respectfully urged that Page does not teach, direct or suggest the structure
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1 specified and claimed by your applicant and that a new or unexpected result exists. Your
2 applicant respectfully requests the Examiner to withdraw the 35 USC 103 (a) rejection of
3 Claim 32.

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5 Law regarding 35 U.S.C. 102.

6 A rejection for anticipation under section 102 requires that each and every
7 limitation of the claimed invention be disclosed in a single prior art reference. (*In Re*
8 *Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); *Helifix Ltd. v.*
9 *Blok-Lok, Ltd.*, 208 F.3d 1339, 1346 (C.A.Fed. Mass. 2000). For a prior art reference to
10 anticipate in terms of 35 U.S.C. S 102, every element of the claimed invention must be
11 identically shown in a single reference. The elements must be arranged as in the claim
12 under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990).
13 Prior art anticipates an invention ... if a single prior art reference contains each and every
14 element of the patent at issue, operating in the same fashion to perform the identical
15 function as the patented product. "Thus, any degree of physical difference between the
16 patented product and the prior art, NO MATTER HOW SLIGHT, defeats the claim of
17 anticipation." (*American Permahedge, Inc. v. Barcana, Inc.*, 857 F. Supp. 308, 32
18 USPQ2d 1801, 1807-08 (S.D. N.Y. 1994); It is incumbent upon the examiner to identify
19 wherein each and every facet of the claimed invention is disclosed in the applied
20 reference. (*Ex Parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int'f 1990)). Since
21 the structures of Clyde and Page differ from that shown herein, the references must be
22 discounted as anticipating the present invention.

23 The applicant has demonstrated differences between features of the referenced
24 prior art and the present invention as specified and claimed. The applicant has presented
25 features of the present invention which are not found within the claims of either reference

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1 patent. The applicant has presented law and argument to support the contention that the
2 rejection of claims 30-31, under 35 U.S.C. 102(b) should be withdrawn and now
3 respectfully requests the Examiner to withdraw the rejections.

4
5 Law regarding 35 U.S.C. 103.

6 The absence of a feature similar to the feature or features of the present invention
7 are respectfully argued as references which teach away from the disclosed and claimed
8 invention and thus are not appropriately a basis of rejection under 103. *In re Gurley* 27
9 F.3d 551 at 553(1994 cafc). In general a reference will teach away if the line of
10 development flowing from the references disclosure is unlikely to be productive of the
11 result sought by the applicant. The existence of holes the length of the units, in Page,
12 does not flow toward the circumstance of the present invention wherein vanes within a
13 tube may be of a length differing from that of the tube.

14 The Examiner has urged prior art alone and in combination as rendering obvious
15 the present invention. However, there is not demonstrated teaching, suggestion or
16 motivation to so combine the several components in the manner done by your present
17 applicant. Such recitation of prior art does not form a basis for rejection as obvious. C.R.
18 Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1361, 48 USPQ2d 1225, 1240 (Fed. Cir.
19 1998), rehearing denied & suggestion for rehearing in banc declined, 161 F.3d 1380 (Fed.
20 Cir. 1998) ("The ultimate question is whether, from the evidence of the prior art and the
21 knowledge generally available to one of ordinary skill in the relevant art, there was in the
22 prior art an appropriate teaching, suggestion, or motivation to combine components in the
23 way that was done by the inventor."); *Chiuminatta Concrete Concepts, Inc. v. Cardinal*
24 *Industries, Inc.*, 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a
25 claim to be invalid for obviousness over a combination of references, there must have
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1 been a motivation to combine the prior art references to produce the claimed invention.");
2 Kahn v. General Motors Corp., 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert.
3 denied, 119 S. Ct. 177 (1998); Fromson v. Anitec Printing Plates, Inc., 132 F.3d 1437,
4 1447, 45 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there
5 is no suggestion or teaching in the prior art to select from the various known procedures
6 and combine specific steps, along with a new electrical structure, in the way that is
7 described and claimed by [the patentee]."); Gambro Lundia AB v. Baxter Healthcare
8 Corp., 110 F.3d 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the
9 record must provide a teaching, suggestion, or reason to substitute computer-controlled
10 valves for the system of hoses in the prior art. The absence of such a suggestion to
11 combine is dispositive in an obviousness determination."; "Without a suggestion or
12 teaching to combine, [the accused infringer's] case of obviousness suffers a significant
13 deficiency."); Kolmes v. World Fibers Corp., 107 F.3d 1534, 1541, 41 USPQ2d 1829,
14 1833 (Fed. Cir. 1997) (the district court did not err in holding the patent in suit not invalid
15 for obviousness; the patent concerned a cut-resistant yarn for use in making products such
16 as gloves, which, unlike prior art yarns, did not use metallic components such as wire; the
17 yarn includes two core strands wrapped in opposite directions around two covering
18 strands; one core strand is fiberglass; the other core strand and the covering strands are
19 nylon or other material; the patent's claim required, inter alia, that there be a two strand
20 core and that the covering strands be "wrapped about said core at the rate of 8-12 turns
21 per inch."; a prior art reference showed a yarn with a wrapping rate of 2-24 turns per inch,
22 but the reference disclosed the use of wire, and the accused infringer "has shown no
23 suggestion or motivation to modify the teaching of the [reference] with regard to
24 non-metallic fibers."); Litton Systems, Inc. v. Honeywell, Inc., 87 F.3d 1559, 1568, 39
25 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one of the prior art references, alone or in
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1 combination, teach or suggest a method [specified in the patent's claims]. The prior art
2 simply does not contain many limitations in the claimed method. Furthermore, the record
3 discloses no teaching or suggestion to combine any of these references. The absence of a
4 suggestion to combine is telling in an obviousness determination."); B.F. Goodrich Co. v.
5 Aircraft Braking Systems Corp., 72 F.3d 1577, 37 USPQ2d 1314 (Fed. Cir. 1996),
6 discussed at N. 12.10(1) infra; Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.,
7 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996); Beachcombers, International, Inc. v.
8 WildeWood Creative Products, Inc., 31 F.3d 1154, 1161, 31 USPQ2d 1653, 1659 (Fed.
9 Cir. 1994) (the patent claims in suit were not obvious in view of the prior art because the
10 art did "not remotely suggest configuring" the device as required by the claim);
11 Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc., 21 F.3d 1068,
12 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the patented invention is made
13 by combining known components to achieve a new system, the prior art must provide a
14 suggestion or motivation to make such a combination."). Texas Instruments Inc. V. U.S.
15 Int'l Trade Comm'n, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir. 1993) for the
16 proposition that obviousness is not supported where the references do not demonstrate to
17 combine to produce the invention as presently disclosed.

18 The issue of viewing the present invention as a template is an inappropriate basis
19 for rejection on the basis of obviousness. The prior art "references in combination do not
20 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to
21 combine the references, respondents can do no more than piece the invention together
22 using the patented invention as a template." Heidelberger Druckmaschinen AG v.
23 Hantscho Commercial Products, Inc., 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993
24 where the court held that "The motivation to combine references can not come from the
25 invention itself."

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1 The applicant respectfully submits that the references, alone and in combination,
2 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,
3 910 F.2d 823, 828, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990); *In Re Mahurkar Patent*
4 *Litigation*, 831 F.Supp. 1354, 28 US PQ2d 1801 (N.D. Ill. 1993). The cases cited stand
5 for the rule that decomposing an invention into its constituent elements, finding each
6 element in the prior art, and then claiming that it is easy to reassemble these elements into
7 the invention, is a forbidden ex post analysis. The applicant submits that it is
8 impermissible to use the claimed invention as an instruction manual or template to piece
9 together the teachings of the prior art so that the claimed invention is rendered obvious.
10 The references simply do not teach to combine the requisite features of your applicant's
11 invention. "Before the PTO may combine the disclosures of two or more prior art
12 references in order to establish Prima Facie obviousness, there must be some suggestion
13 for doing so, found either in the references themselves or in the knowledge generally
14 available to one of ordinary skill in the art.(IN RE Jones, 958 F.2d 347, 351, 21 USPQ2d
15 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to
16 combine prior art references may flow, inter alia, from the references themselves, the
17 knowledge of one of ordinary skill in the art, or from the nature of the problem to be
18 solved. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need
19 not expressly teach that the disclosure contained therein should be combined with
20 another, see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472, 43 USPQ2d
21 1481, 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must
22 nevertheless be "clear and particular." Dembiczak, 175 F.3d at 999, 50 USPQ2d at
23 1617." *Winner International Royalty Corporation v. Ching-Rong Wang*, 202 F.3d
24 1340(CAFC 2000).

25 The applicant respectfully requests the Examiner to withdraw the 103 rejections

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1 in light of the argument, amendments and responses submitted.

2 **UNEXPECTED IMPROVED QUALITIES.** Your applicant respectfully comments on
3 the unexpected improved qualities inherent in this disclosure and particularly in contrast
4 to the disclosures of cited in the Examiner's Action. The recognition that the core may be
5 of a lesser length than the inner core demonstrates the unexpected improvement of
6 allowing construction with fewer parts thus expecting a reduction in cost of construction.

7 These stated features suggests a reduction in manufacturing costs. "Factors
8 including unexpected results, new features, solution of a different problem, novel
9 properties, are all considerations in the determination of obviousness in terms of 35
10 U.S.C. S 103. When such factors are described in the specification they are weighed in
11 determining, in the first instance, whether the prior art presents a prima facie case of
12 obviousness ... When such factors are brought out in prosecution before the PTO, they are
13 considered in determining whether a prima facie case, if made based on the prior art, has
14 been rebutted." *IN RE Wright*, 848 F.2d 1216, 1219, 6 USPQ2d 1959, 1962 (Fed. Cir.
15 1988), DISAPPROVED IN PART, *IN RE Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed.
16 Cir. 1990), CERT. DENIED, *Dillon v. Manbeck*, 111 S. Ct. 1682 (1991), discussed in
17 CHISUMS at S 5.04[6][d]; *Reading & Bates Construction Co. v. Baker Energy*
18 *Resources Corp.*, 748 F.2d 645, 223 USPQ 1168 (Fed. Cir. 1984); *IN RE Merchant*, 575
19 F.2d 865, 869, 197 USPQ 785, 788 (CCPA 1978) (stressing that there is no requirement
20 that the "unexpected results relied upon for patentability be recited in the CLAIMS". "It
21 is entirely proper, nevertheless, in evaluating nonobviousness, for a court to take to
22 account advantages directly flowing from the invention patented. After all, those
23 advantages are the foundation of that 'commercial success' which may be evidence of
24 nonobviousness." *Preemption Devices, Inc. v. Minnesota Mining & Mfg. Co.*, 732 F.2d
25 903, 907, 221 USPQ 841, 844 (Fed. Cir. 1984).

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1 The applicant has set forth arguments and law for the basis upon which prior art
2 cited under 35 U.S.C. 103 should not result in a conclusion of obviousness for the present
3 invention as specified and claimed. The applicant has presented features of the present
4 invention which are not found within the claims of either reference patent. The applicant
5 has presented law and argument to support the contention that the rejection of claims,
6 under 35 U.S.C. 103 should be withdrawn and now respectfully requests the Examiner to
7 withdraw the rejections.

8
9 **SUMMARY OF AMENDMENTS AND REMARKS**

10 The applicant has reviewed the Examiner's Action of June 4, 2004 and has
11 addressed all objections and rejections disclosed therein. Accordingly, the applicant has
12 made a good faith attempt to meet each objection and/or rejection as noted by the
13 Examiner. Accordingly your applicant requests the Examiner to withdraw the said
14 objections and rejections and to allow the Claims.

15 Respectfully submitted,

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19 *****

20 **CERTIFICATE OF TRANSMISSION:**

21 The undersigned hereby certifies that this correspondence is being facsimile transmitted
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